

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 1384 - SB 1878

March 31, 2011

SUMMARY OF BILL: Amends the Uniform Administrative Procedures Act (UAPA) to require all new fees and fee increases created by state agencies through a UAPA rule to take effect on July 1 following the date of the rule filing with the Secretary of State. Currently, UAPA states that all rules, other than emergency rules, are effective 90 days after they are filed with the Secretary of State's office, and expire on June 30 following the year in which they were filed, unless the General Assembly passes a law making them permanent. Emergency rules are effective immediately after an Attorney General's review without a 90 day waiting period.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue – \$7,000,000/One-Time/Environmental Protection Fund

Other Fiscal Impact – The state may forgo unknown amounts of fee revenue depending upon the timing of the promulgation of rules relative to the July 1 effective date.

Assumptions:

- The bill will become effective on July 1, 2011 and apply to any rule involving fees filed after that date.
- Agencies operating regulatory programs dependent on fees would be affected.
- The bill will have the effect of shortening the time period for fee rules to become effective if they are filed between April 1 and June 30, and lengthening the time period for rules filed during the rest of the year.
- In the case of rules filed fewer than 90 days prior to July 1, they would become effective prior to the expiration of the 90-day period otherwise required by law. In the case of rules filed between 90 and 365 days prior to July 1, they would not become effective until July 1 following the date of filing.
- Emergency rules establishing new fees or fee increases will experience a delay because emergency rules currently are effective immediately upon filing with the Secretary of State's office.
- According to the Department of Environment and Conservation (TDEC), in the case of a rule filed in July, the enactment of this bill will prevent the Department from receiving any of the revenue in the current fiscal year.

HB 1384 - SB 1878

- According to TDEC, passage of the bill will jeopardize a federal program in the Division of Air Pollution Control, the Title V Program, in the amount of \$7,000,000.
- Because actual emissions cannot be forecast with precision, the rule is structured to collect the fee at the end of the state fiscal year rather than at the beginning of the year to allow a Title V permit holder to make an accurate payment. The State Air Board sets a new fee for each state fiscal year, and acts on fee revisions in the January to February time period to allow adequate notice for fee payers to submit fees when the revised rule becomes effective by the June 30 deadline. Under this bill, the new fee rule could not be effective until July 1, 2011.
- According to TDEC, fees received by the Air Division in one fiscal year can only be used in that fiscal year. Under this bill, fees for FY11-12 will not become effective until July 1, 2012 and the payments received in FY12-13 cannot be credited back to FY11-12. Therefore, the Division of Air Pollution Control will not receive fee revenue in FY11-12, which pursuant to federal law must be the sole support for the Title V Program.
- In FY11-12, the one-time decrease in state revenue to TDEC will be \$7,000,000 from the loss of Title V permit holder paying fees.
- According to the Department of Commerce and Insurance, all of the regulatory programs administratively attached to the Division of Regulatory Boards are required to be self-sufficient. Any fee created through the promulgation of a rule is for the purpose of funding the regulatory program. Delaying the effective date of such rules may result in forgone revenue that could have a negative impact on the ability of the regulatory boards to comply with the self-sufficiency requirement in a given year.
- Because initial licenses are continuously issued and renewals occur in most programs on a rolling basis, licensing revenue will be forgone between the effective date of the rules and July 1. Because it is unknown which programs will seek fee increases, which programs will be created by the General Assembly, and the effective date for licensing, any amount of forgone state revenue cannot be quantified.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/rct